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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ART TOBIAS,	) Case No. 2:17-cv-1076-DSF-AS
	)
Plaintiff,	) <b>DECLARATION OF DAVID B.</b>
v.	) <b>OWENS IN SUPPORT OF</b>
	) <b>PLAINTIFF'S RESPONSE IN</b>
CITY OF LOS ANGELES, et al.	) <b>OPPOSITION TO DEFENDANTS'</b>
	) <b>MOTIONS FOR SUMMARY</b>
Defendants.	) <b>JUDGMENT</b>
	)
	) <b>DATE: August 27, 2018</b>
	) <b>TIME: 1:30 p.m.</b>
	) <b>DEPT.: Courtroom 7D</b>
	) <b>JUDGE: Hon. Dale S. Fischer</b>

1 I, David B. Owens, if called upon to testify will competently testify as  
2 follows:

3 1. I am an attorney at law licensed to practice before this Court. I am an  
4 attorney with the law firm of Loevy & Loevy, attorneys of record for Plaintiff ART  
5 TOBIAS in the above-referenced matter. I have personal knowledge of the matters  
6 set forth herein below and if called upon to testify will competently testify thereto.

7 2. This declaration is made in connection with Plaintiff's Opposition to  
8 Defendants' Motions for Summary Judgment, or in the Alternate, for Partial  
9 Summary Judgment.

10 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Arrest  
11 Report of Art Tobias, dated August 20, 2012, produced by the City of Los Angeles  
12 in this litigation. This file is confidential and is concurrently being submitted for  
13 filing under seal.

14 4. Attached hereto as **Exhibit 2** is a true and correct copy of the  
15 Investigative Report of Officers Ybanez and Godoy, dated August 18, 2012,  
16 produced by the City of Los Angeles in this litigation. This file is confidential and  
17 is concurrently being submitted for filing under seal.

18 5. Attached hereto as **Exhibit 3** is a true and correct copy of the Death  
19  
20

1 Investigation Report of Defendants Motto and Pere, dated August 18, 2012,  
2 produced by the City of Los Angeles in this litigation. This file is confidential and  
3 is concurrently being submitted for filing under seal.

4 6. Attached hereto as **Exhibit 4** is a true and correct copy of the  
5 transcript of a Proffer Statement, in criminal proceedings before the California  
6 Superior Court relative to a homicide investigation. This file is highly confidential  
7 and is concurrently being submitted for filing under seal.

8 7. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from  
9 the deposition of Plaintiff Art Tobias, which was taken in two parts, on June 4,  
10 2018 and June 12, 2018, in Los Angeles, California.

11 8. Attached hereto as **Exhibit 6** is a true and correct copy of a certified  
12 Transcript of Audio Recording from Berendo Middle School, dated August 20,  
13 2012. This transcript was transcribed in Chicago, Illinois by a certified court  
14 reporter.

15 9. Attached hereto as **Exhibit 7** is a true and correct copy of a CD  
16 containing Audio Recording from Berendo Middle School, dated August 20, 2012.  
17 This is an audio file and thus it is concurrently being noticed for manual filing.

18 10. Attached hereto as **Exhibit 8** is a true and correct copy of Plaintiff's  
19 30(b)(6) Notice to the City of Los Angeles in this matter.

20 11. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from

1 the deposition of Helen Contreras, Plaintiff's mother, which was taken on March  
2 26, 2018 in Los Angeles, California.

3 12.Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from  
4 the deposition of Defendant Daniel East, which was taken on February 20, 2018 in  
5 Los Angeles, California.

6 13.Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from  
7 the deposition of Defendant Jeff Cortina, which was taken on December 18, 2017  
8 in Los Angeles, California.

9 14.Attached hereto as **Exhibits 12A, 12B, and 12C** is a true and correct  
10 copy of a CD containing the Video Recording of the Interrogation of Art Tobias,  
11 dated August 20, 2012. These files are confidential and are concurrently being  
12 submitted for filing under seal. These are video files and thus they are also  
13 concurrently being noticed for manual filing.

14 15.Attached hereto as **Exhibit 13** is a true and correct copy of the Transcript  
15 of the Interrogation of Art Tobias, dated August 20, 2012. This file is confidential  
16 and is concurrently being submitted for filing under seal.

17 16.Attached hereto as **Exhibit 14** is a true and correct copy of the Complete  
18 Trial Transcripts from *People vs. Art Tobias*, dated May 7, 9, and 10, 2013 June  
19 12, 2013 and August 19 and 22, 2013. This file is confidential and is concurrently  
20

1 being submitted for filing under seal. Given the *Brady* claims raised in this matter,  
2 Plaintiff has provided the entire transcript to the Court.

3 17. Attached hereto as **Exhibit 15** is a true and correct copy of the In-Service  
4 Training Records of Defendants Arteaga, Cortina, Motto, Pere. This file is  
5 confidential and is concurrently being submitted for filing under seal.

6 18. Attached hereto as **Exhibit 16** is a true and correct copy of the Transcript  
7 of the Video-Recorded Interview of Helen Contreras, dated August 20, 2012. This  
8 was transcribed by a certified court reporter in Chicago, Illinois. This file is  
9 confidential and is concurrently being submitted for filing under seal.

10 19. Attached hereto as **Exhibit 17** is a true and correct copy of a CD of the  
11 Video Recording of the Interview of Helen Contreras, dated August 20, 2012. This  
12 file is confidential and is concurrently being submitted for filing under seal. In  
13 addition, this is a video file and thus it is concurrently being noticed for manual  
14 filing.

15 20. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from  
16 the deposition of Defendant Michael Arteaga, which was taken on April 10, 2018  
17 in Los Angeles, California.

18 21. Attached hereto as **Exhibit 19** is a true and correct copy of the  
19 Declaration Expert Reports of Dr. Richard Leo as well as other documents  
20 produced in this litigation by Dr. Leo.

1           22. Attached hereto as **Exhibit 20** is a true and correct copy of the  
2 Declaration and Expert Reports of Dr. Timothy T. Williams.

3           23. Attached hereto as **Exhibit 21** is a true and correct copy of Plaintiff's  
4 Response to Defendant East's First Set of Interrogatories.

5           24. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from  
6 the LAPD Manual of Juvenile Procedures.

7           25. Attached hereto as **Exhibit 23** is a true and correct copy of the Note from  
8 Defendant Cortina to Detective Robledo, written to accompany the Tobias  
9 Interrogation Video. This file is confidential and is concurrently being submitted  
10 for filing under seal.

11           26. Attached hereto as **Exhibit 24** is a true and correct copy of the Transcript  
12 of the Phone Calls of Art Tobias, dated August 20, 2012. This file is confidential  
13 and is concurrently being submitted for filing under seal.

14           27. Attached hereto as **Exhibit 25** is a true and correct copy of  
15 Correspondence between Counsel: Request for Emails.

16           28. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from  
17 the deposition of Defendant Marshall Cooley, which was taken on February 16,  
18 2018 in Los Angeles, California.

19           29. Attached hereto as **Exhibit 27** is a true and correct copy of the Statement  
20

1 Form of Defendant Cooley, dated September 14, 2012. This file is confidential and  
2 is concurrently being submitted for filing under seal.

3 30. Attached hereto as **Exhibit 28** is a true and correct copy of a CD  
4 containing the Surveillance Video from Alvarado Terrace, dated August 17 and 18,  
5 2012. This file is confidential and is concurrently being submitted for filing under  
6 seal. In addition, this is a video file and thus it is concurrently being noticed for  
7 manual filing.

8 31. Attached hereto as **Exhibit 29** is a true and correct copy of a Freeze  
9 Frame of the Shooter from the Surveillance Video, dated August 18, 2012. This  
10 file is confidential and is concurrently being submitted for filing under seal.

11 32. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from  
12 the deposition of Defendant Dora Born, which was taken on February 16, 2018 in  
13 Los Angeles, California.

14 33. Attached hereto as **Exhibit 31** is a true and correct copy of the Statement  
15 form of Defendant Arteaga, dated August 20, 2012. This file is confidential and is  
16 concurrently being submitted for filing under seal.

17 34. Attached hereto as **Exhibit 32** is a true and correct copy of Pictures of  
18 Art Tobias from August 2012, extracted from the Murder Book(s) produced in this  
19 case. This file is confidential and is concurrently being submitted for filing under  
20 seal.

1           35. Attached hereto as **Exhibit 33** is a true and correct copy of the F.I. Cards  
2 of Art Tobias produced by the City of Los Angeles in this litigation. This file is  
3 confidential and is concurrently being submitted for filing under seal.

4           36. Attached hereto as **Exhibit 34** is a true and correct copy of Defendant  
5 East's Response to Plaintiff's First Set of Interrogatories

6           37. Attached hereto as **Exhibit 35** is a true and correct copy of the Statement  
7 Form of Defendant Born, Undated. This file is confidential and is concurrently  
8 being submitted for filing under seal.

9           38. Attached hereto as **Exhibit 36** is a true and correct copy excerpts from  
10 the deposition of Moses Castillo, one of the City's 30(b)(6) designees, which was  
11 taken on June 5, 2018 in Los Angeles, California.

12           39. Attached hereto as **Exhibit 37** is a true and correct copy of excerpts from  
13 the deposition of Carole Acosta, which was taken on June 12, 2018 in Los  
14 Angeles, California.

15           40. Attached hereto as **Exhibit 38** is a true and correct copy of excerpts from  
16 the deposition of Daniel Jenks, one of the City's 30(b)(6) designees, which was  
17 taken on June 5, 2018 in Los Angeles, California.

18           41. Attached hereto as **Exhibit 39** is a true and correct copy of a Page from  
19 Interrogation Procedure, LAPD Manual 2012, 4<sup>th</sup> Edition, LAPD 6170.

20           42. Attached hereto as **Exhibit 40** is a true and correct copy of excerpts from



1 the Homicide Manual.

2 43.Attached hereto as **Exhibit 41** is a true and correct copy of excerpts from  
3 the Detective Manual.

4 44.Attached hereto as **Exhibit 42** is a true and correct copy of the LAPD  
5 Internal Affairs File regarding the investigation into the Art Tobias matter. This  
6 file is confidential and is concurrently being submitted for filing under seal.

7 45.Attached hereto as **Exhibit 43** is a true and correct copy of the Appellate  
8 Decision in the Case of *People v. Art Tobias*.

9 46.Attached hereto as **Exhibit 44** is a true and correct copy of Defendant  
10 City of Los Angeles' Response to Plaintiff's Interrogatory No. 6.

11 47.Attached hereto as **Exhibit 45** is a true and correct copy of excerpts from  
12 the deposition of Defendant John Motto, which was taken on December 19, 2017  
13 in Los Angeles, California.

14 48.Attached hereto as **Exhibit 46** is a true and correct copy of excerpts from  
15 the deposition of Defendant Julian Pere, which was taken on March 6, 2018 in Los  
16 Angeles, California.

17 49.Attached hereto as **Exhibit 47** is a true and correct copy of the  
18 Preliminary Case Screening of the Castaneda Homicide, dated August 18, 2012.  
19 This file is confidential and is concurrently being submitted for filing under seal.

20 50.Attached hereto as **Exhibit 48** is a true and correct copy of the F.I. Card

1 of Alfonzo Cruz. This file is confidential and is concurrently being submitted for  
2 filing under seal.

3 51. Attached hereto as **Exhibit 49** is a true and correct copy of the F.I. Card  
4 of Ricky Mora. This file is confidential and is concurrently being submitted for  
5 filing under seal.

6 52. Attached hereto as **Exhibit 50** is a true and correct copy of the F.I. Card  
7 of Kevin Soria. This file is confidential and is concurrently being submitted for  
8 filing under seal.

9 53. Attached hereto as **Exhibit 51** is a true and correct copy of the F.I. Card  
10 of Art Tobias. This file is confidential and is concurrently being submitted for  
11 filing under seal.

12 54. Attached hereto as **Exhibit 52** is a true and correct copy of the  
13 Investigator's Final Report regarding the arrest of Eric Martinez, dated August 21,  
14 2012. This file is confidential and is concurrently being submitted for filing under  
15 seal.

16 55. Attached hereto as **Exhibit 53** is a true and correct copy of the Statement  
17 form of Defendant East, dated August 20, 2012. This file is confidential and is  
18 concurrently being submitted for filing under seal.

19 56. Attached hereto as **Exhibit 54** is a true and correct copy of the Probable  
20

1 Cause Determination Declaration, regarding the arrest of Art Tobias, dated August  
2 20, 2012. This file is confidential and is concurrently being submitted for filing  
3 under seal.

4 57.Attached hereto as **Exhibit 55** is a true and correct copy of the Crime  
5 Scene Log of the Castaneda Homicide, dated August 18, 2012. This file is  
6 confidential and is concurrently being submitted for filing under seal.

7 58.Attached hereto as **Exhibit 56** is a true and correct copy of the  
8 Chronological Record of the Castaneda Homicide Investigation. This file is  
9 confidential and is concurrently being submitted for filing under seal.

10 59.Attached hereto as **Exhibit 57** a true and correct copy of the Tobias  
11 Name Search, dated August 20, 2012. This file is confidential and is concurrently  
12 being submitted for filing under seal.

13 60.Attached hereto as **Exhibit 58** is a true and correct copy of the Arrest  
14 Report for Eric Martinez, dated August 21, 2012. This file is confidential and is  
15 concurrently being submitted for filing under seal.

16 61.Attached hereto as **Exhibit 59** is a true and correct copy of the Final  
17 Report regarding the arrest of Eric Martinez on August 21, 2012. This file is  
18 confidential and is concurrently being submitted for filing under seal.

19 62.Attached hereto as **Exhibit 60** is a true and correct copy of the Report  
20

1 Showing .40 Caliber Casing at the Scene of the Castaneda Homicide, dated August  
2 20, 2012. This file is confidential and is concurrently being submitted for filing  
3 under seal.

4 63. Attached hereto as **Exhibit 61** is a true and correct copy of the Firearms  
5 Lab Report, dated May 7, 2013. This file is confidential and is concurrently being  
6 submitted for filing under seal.

7 64. Attached hereto as **Exhibit 62** is a true and correct copy of the Defense  
8 Attorney Murder Book. This file is confidential and is concurrently being  
9 submitted for filing under seal. In addition, due to the large size of the file (greater  
10 than 24KB), this exhibit is concurrently being noticed for manual filing.

11 65. Attached hereto as **Exhibit 63** is a true and correct copy of the Subpoena  
12 Responses of Art Tobias' Trial Attorneys.

13 66. Attached hereto as **Exhibit 64** is a true and correct copy of the LAPD  
14 Murder Book. This file is confidential and is concurrently being submitted for  
15 filing under seal. In addition, due to the large size of the file (greater than 24KB),  
16 this exhibit is concurrently being noticed for manual filing.

17 67. Attached hereto as **Exhibit 65** is a true and correct copy of the  
18 Declaration of Patricia Soung.

19 68. Attached hereto as **Exhibit 66** is a true and correct copy of the Eric  
20

1 Martinez Photo Lineup. This file is confidential and is concurrently being  
2 submitted for filing under seal.

3 69. Attached hereto as **Exhibit 67** is a true and correct copy of the  
4 Investigation Notes. This file is confidential and is concurrently being submitted  
5 for filing under seal.

6 70. Attached hereto as **Exhibit 68** is a true and correct copy of the Lab  
7 Bench Notes from the LAPD Firearms Analysis Unit. This file is confidential and  
8 is concurrently being submitted for filing under seal.

9 71. Attached hereto as **Exhibit 69** is a true and correct copy of the Defendant  
10 City of Los Angeles' Responses to Plaintiff's Requests for Production No.'s 33,  
11 35.

12 72. Attached hereto as **Exhibit 70** is a true and correct copy of the  
13 Declaration of Sherri Albin.

14 73. Attached hereto as **Exhibit 71** is a true and correct copy of the Follow-  
15 Up Report regarding the arrest of Art Tobias, dated June 25, 2013. This file is  
16 confidential and is concurrently being submitted for filing under seal.

17 74. Attached hereto as **Exhibit 72** is a true and correct copy of the Scene  
18 Sketch. This file is confidential and is concurrently being submitted for filing  
19 under seal.

20 75. Attached hereto as **Exhibit 73** is a true and correct copy of Detective

Defendants' Responses to Plaintiff's First Set of Interrogatories.

76. Attached hereto as **Exhibit 74** is a true and correct copy of Defendant East's Responses to Plaintiff's Request for Production No. 3.

77. Attached hereto as **Exhibit 75** is a true and correct copy of the Statement Form of Defendant Cooley, Undated. This file is confidential and is concurrently being submitted for filing under seal.

78. Attached hereto as **Exhibit 76** is a true and correct copy of the Time Sheet of Defendants Motto, Pere, Cortina, and Arteaga, dated August 12, 2012 to September 8, 2012. This file is confidential and is concurrently being submitted for filing under seal.

79. Attached hereto as **Exhibit 77** is a true and correct copy of Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004).

80. Attached hereto as **Exhibit 78** is a true and correct copy of Defendant Cortina's Response to Plaintiff's Second Set of Interrogatories.

81. Attached hereto as **Exhibit 79** is a true and correct copy of the Art Tobias Booking Approval Form, dated August 20, 2012. This file is confidential and is concurrently being submitted for filing under seal.

82. Attached hereto as **Exhibit 80** is a true and correct copy of

1 Correspondence re: Outstanding Discovery, dated January 18, 2013. This file is  
2 confidential and is concurrently being submitted for filing under seal.

3 83.Attached hereto as **Exhibit 81** is a true and correct copy of the Follow-  
4 Up on Charging Reports regarding the Eric Martinez Arrest on August 21, 2012.  
5 This file is confidential and is concurrently being submitted for filing under seal.

6 84.Attached hereto as **Exhibit 82** is a true and correct copy of the Fax from  
7 Defendant Pere to Officer Jackman, dated August 27, 2012. This file is  
8 confidential and is concurrently being submitted for filing under seal.

9 85.Attached hereto as **Exhibit 83** is a true and correct copy of the Search  
10 Warrant for Eric Martinez's Cell Phone, dated September 27, 2012. This file is  
11 confidential and is concurrently being submitted for filing under seal.

12 86.Attached hereto as **Exhibit 84** is a true and correct copy of the Search  
13 Warrant for Eric Martinez's Cell Phone, dated July 15, 2015. This file is  
14 confidential and is concurrently being submitted for filing under seal.

15 87.Attached hereto as **Exhibit 85** is a true and correct copy of Defendants  
16 Handwritten Notes re Berendo Middle School Interview. This file is confidential  
17 and is concurrently being submitted for filing under seal.

18 I declare under penalty of perjury under the laws of the United States that  
19 the foregoing is true and correct.

1 Dated: August 6, 2018

2  
3 Respectfully submitted,

4 **ART TOBIAS**

5 By: /s/ David B. Owens  
6 *One of Plaintiff's attorneys*

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